



UNITED STATES COMMISSION
FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

September 16, 2015

The Honorable Ron Johnson, Chairman
The Honorable Thomas R. Carper, Ranking Minority Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC

Dear Chairman Johnson and Ranking Member Carper:

I write in further response to Chairman Johnson's letter of August 10, 2015 (the "Letter") and my initial response of August 21, 2015, which indicated that the Commission would be submitting a substantive response to the issues raised in the Letter by September 24th. I submit today's interim submission in response to several recent and extremely inaccurate reports in the news media regarding the Commission's operations and, in particular, matters related to one of its contractors, The Oliver Group, Inc., which provides the services of Jeffrey Farrow. These mischaracterizations arise out of certain egregiously inaccurate allegations contained within the Committee's Letter, which appears to have been publicly released before the Commission had an opportunity to formally respond and correct the record.

As you are aware, the Commission was created in 1985 by Congress and President Ronald Reagan as an independent federal agency, comprised of 21 Members who receive no compensation. The Commission was established with a mandate to identify and report on cemeteries, monuments, and historic buildings in Eastern and Central Europe that are associated with the heritage of U.S. citizens, particularly endangered properties, and to obtain, in cooperation with the Department of State, assurances from the Communist Soviet bloc governments of the region that the properties would be protected and preserved. Despite the challenges of this mission, the Commission was originally tasked with operating without any appropriated funds or employees. Since its establishment, the Commission has grappled with financial and logistical limitations that have made it difficult for our small, unique agency to function in a manner consistent with a normal federal entity, especially in its limited ability to employ personnel needed to support its mission.

In the Commission's early years, the Office of Management and Budget ("OMB") determined that the Commission should raise private funds for its work. As a result, from 1985 to 1990, all expenditures related to the Commission were paid by a 501(c)(3) entity known as the Associates of the U.S. Commission for the Preservation of America's Heritage Abroad. During these years, the Commission received no federal appropriations of any kind. Even after receiving modest federal funds after several years of operation, over the next 14 years, the Commission was not given the necessary Full Time Equivalent ("FTE") authorization to hire any full-time federal employees. Thus, for most of its existence, the Commission has operated only by employing the services of various part-time and full-time contractors. These contractors have not been federal employees and did not receive the various benefits or security of federal employment. When FTE authorization was initially provided in 2004, it afforded the Commission only one mid-level, full-time staffer, and the Commission's limited budget still could not support the hiring of a senior staffer needed because of its mission.

As a result of these circumstances, the Commission has historically retained independent contractors to support its mission and to advise Commission Members and the Chairman. Over time, some contractors have been given titles such as Executive Director, Research Director, and International Legal Advisor. In all cases, however, such contractors have served in inherently advisory roles, with all decision-making and spending authority vested in the Chairman. Although asked to perform certain advisory and ministerial functions in support of the Commission's operations, such contractors have uniformly lacked any decision-making authority on matters related to the Commission. They performed no inherently governmental functions, with very few exceptions, all of which were reviewed and authorized by separate government authorities such as the Office of Government Ethics, the Office of Management and Budget, and the General Services Administration due to the Commission's limited staffing and resources.

Moreover, Commission Chairmen have raised the management issues and logistical limitations necessitating this process multiple times with officials at the Office of Management and Budget, the Office of Government Ethics, the General Services Administration, and congressional committees. Each of these consultations agreed that the Commission had no viable alternative to the way in which it was proceeding. In this sense, the Commission was advised that the process it was utilizing was not improper. Moreover, the Commission regularly reported to the congressional appropriations committees its use of part-time contractors with titles such as Executive Director.

In 2001, pursuant to the necessary process described above, the Associates, at the request of then-Chairman Warren Miller began to engage Mr. Farrow to provide essential advisory services as a contractor on a part-time basis to the Commission with the nominal title of Executive Director. In proceeding this way, Mr. Miller was continuing practices that were well established by the Commission—Mr. Farrow's predecessor (himself a former federal financial officer for a small agency) had

served previous Chairmen under similar arrangements and with the same title for more than twelve years prior to Mr. Farrow's engagement with the Commission. When the Commission sought to replace the retiring former contractor and ultimately recruited Mr. Farrow, the position was accurately advertised as a contracted consulting arrangement—not a full-time or federal position.

Importantly, the Commission—through the GSA—pays The Oliver Group for Mr. Farrow's services. The amount paid to this professional firm cannot be considered to be the amount that Mr. Farrow ultimately receives from the firm for his Commission services. Entities providing services, especially corporations involving more than one person, have other costs of doing business that the Government routinely recognizes in its payments for services. Those other costs amount to the overhead involved in running a business (e.g., Social Security and Medicare taxes; health, life, and disability insurance; retirement plan contributions; business taxes and fees; and supplies and expenses). Moreover, while he has been the primary provider of services under the agreement, Mr. Farrow is not the only contractor with The Oliver Group and his prior firm who has performed services for the Commission during the engagements.

While Mr. Farrow and the Oliver Group have been engaged by the Commission, we were not The Oliver Group's or his only client. Consistent with the findings of the GSA OIG, Mr. Farrow did not use the Commission's offices or other resources to benefit his private lobbying practice or to host any meetings regarding other clients of The Oliver Group, nor did he utilize his position at the Commission in any way to advocate for other clients. During Mr. Farrow's tenure as a contractor to the Commission, The Oliver Group and his prior firm maintained a separate K Street address and, before that, other downtown, Washington, D.C. locations. The interests of the Oliver Group's other clients did not relate to the mission of the Commission—substantively, geographically, or in any other way—and did not present any conflict of interest.

Contrary to the inaccurate representations in the Committee's Letter and in certain media reports that have relied on these representations, Mr. Farrow was never paid \$143,000 per year by the Commission, nor has his work ever been limited to only one day a week—these allegations are based on incorrect assumptions and faulty arithmetic that has grossly understated the hours worked by Mr. Farrow and overstated the compensation provided. The terms of the engagements with The Oliver Group have been favorable for the Government, given the scope of the work performed, the high level of relevant experience, expertise, and dedication that Mr. Farrow brought to the Commission. Only a portion of his work for the Commission is provided during the hours he is physically present at the Commission's offices. Although Mr. Farrow functions in a part-time capacity with the Commission, he has consistently made himself available to the Commission both inside and outside of normal working hours, providing advice and assistance to me and other members of the Commission, conducting research, drafting and reviewing documents, and

assisting the Commission's Chairmen in contacts with other agencies, the Executive Office of the President, the Congress, and foreign governments.

During my tenure as Chair of the Commission, I have routinely talked to Mr. Farrow on a virtually daily basis, often multiple times each day. During the various busier periods for the Commission, we would call upon Mr. Farrow for extended periods each day for many days. Mr. Farrow has provided invaluable assistance to the Commission in pursuing its mission. In the fiscal years that The Oliver Group has served as a contractor to the Commission, it has received between \$80,520 and \$104,842 from the Commission, and at no point was a bonus paid. For example, for the year in which the Letter asserts that Mr. Farrow was paid \$143,000, the total amount paid to The Oliver Group was \$101,019. Over those same years, my predecessor and I recall that Mr. Farrow worked between 800 and 1000 hours in fulfilling the agreement. Even if one uses the low side of the range of hours (800) and the high side of the contract payment range (\$104,842) the hourly rate paid under the contract would be \$131.05 per hour, considerably different from the incorrect hourly rate of \$688 contained in Chairman Johnson's Letter.

When I became Chair of the Commission, I believed our arrangements with The Oliver Group and other contractor service providers were permitted under the Commission's organic structure and other statutory and regulatory provisions. However, out of an abundance of caution and in response to concerns regarding these matters, I sought further clarification on the Commission's procurement practices from the GSA and other governmental authorities, who confirmed that our procedures were not improper. In these respects, I have exercised consistent oversight of the Commission's operations to ensure compliance with all relevant laws. With respect to the allegations in the Committee's Letter that the Commission has failed to cooperate with the Committee's inquiry, materials relevant to the inquiry were originally requested by Committee staff member Luke Rosiak during his tenure as a journalist for the *Washington Examiner*. It has never been my or the Commission's intent to withhold relevant information from any appropriate Committees of Congress.

Finally, it has been suggested by Chairman Johnson in the news media that the Commission has done little to accomplish the goals for which it was established. This remark starkly contrasts with resolutions of the U.S. Senate and the House of Representatives that have recognized and supported the Commission's efforts to protect and preserve sites through interventions with foreign governments. In fact, the Commission has concluded bilateral agreements with 24 of the 29 nations in Eastern and Central Europe for which the Department of State has given the Commission negotiating authority—most of which have been reached since 2001. The Commission has also helped to mark, restore, and preserve a vast number of cultural sites with donations of private funds. One such example is the memorial that the Commission created at the Buchenwald camp, which President Obama visited in 2009 with German Chancellor Angela Merkel and Nobel Laureate Elie Wiesel, a former prisoner at the camp. This project represents only a fraction of the

Commission's accomplishments during its 30 years of operation, for which it has received the praise of numerous Members of Congress, including commendations by the House Committee on Appropriations.

As you will further see in our forthcoming formal response, your Letter appears to rely on certain inaccurate representations and other accusations, many of which have previously been investigated and found to be unsubstantiated. I look forward to further correcting the record on these and related matters.

Sincerely,

A handwritten signature in cursive script, reading "Lesley Weiss".

Lesley Weiss
Chair

cc: Members of the Commission